

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **FRANK GASCOT-NARVAEZ**

4 **Plaintiff,**

5 **v.**

6 **Civil No. 10-1419 (GAG)**

7 **COMMISSIONER OF SOCIAL**
8 **SECURITY,**

9 **Defendant.**

10 **OPINION AND ORDER**

11 The instant case is hereby **REMANDED** to the Commissioner of Social Security for
12 proceedings consistent with this order.

13 The Commissioner at page eleven of his memorandum concedes that the Administrative Law
14 Judge's ("ALJ") failure to find any severe impairment at Step II may have been an error. (See
15 Docket No. 19 at 11.) However, the Commissioner argues it was harmless. (See id.)

16 The court, upon review, cannot conclude that said error was indeed harmless or not. The
17 ALJ either missed or inadvertently ignored evidence that DDS psychologist Ramón Nevares
18 determined that plaintiff had conditions tantamounting to a severe mental impairment. (See Tr. 371-
19 87); see also Memorandum of Commissioner at 11 n.4. This puts the court in a scenario opposite
20 to that in cases cited by the Commissioner (Docket No. 19 at 12-13), in which it was readily
21 determined that the error harmless. Here, we are not only looking at an ALJ who committed error
22 at Step II, but also one which now prevents the court from determining whether the error was
23 harmless or not because it appears that the ALJ in part did not consider all the evidence of record
24 before him.

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3 **SO ORDERED.**

4 In San Juan, Puerto Rico this 22nd day of August, 2012.

5 *S/Gustavo A. Gelpí*

6 GUSTAVO A. GELPÍ

7 United States District Judge

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